



Georgia Department of Revenue
Informational Bulletin SUT 2010-12-23
Taxation of “Food and Food Ingredients” and “Prepared Food”

- 1) Purpose: To provide guidance to dealers that sell food, food ingredients and prepared food regarding changes to and clarification of certain sales tax provisions as of January 1, 2011.
- 2) Effective Date: January 1, 2011.
- 3) Supersedes: All previous documents and any oral directives in conflict herewith.
- 4) Authority: §§ 48-8-2, 48-8-3,
- 5) Scope: An Informational Bulletin is intended to provide guidance to the public and to Department of Revenue personnel. It is a written statement issued to apply principles of law to a specific set of facts or a general category of taxpayers. An Informational Bulletin does not have the force or effect of law, and is not binding on the public. It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.
- 6) Issue: How will the taxation of various food items change effective January 1, 2011?
- 7) Discussion of Issue

a) CURRENT – Taxation of Food Until January 1, 2011

i) SUBJECT TO LOCAL TAXES ONLY

“Eligible Food and Beverages” sold for off-premises human consumption or use.

- Until January 1, 2011, Georgia law provides an exemption from state sales and use tax for the sale for off-premises human consumption or use of eligible foods and beverages. With certain exceptions, “eligible food and beverages” means any food as defined in Section 3 of the federal Food Stamp Act of 1977 (P.L. 95-113), as amended, 7 U.S.C.A. 2012(g), as such Act existed on January 1, 1996. “Eligible food and beverages” are only exempt from state sales/use tax, *i.e.*, they are subject to any applicable local taxes.

ii) SUBJECT TO BOTH STATE AND LOCAL TAXES

Generally, food and beverages sold for on-premises consumption or use, and food that does not qualify under the federal Food Stamp Act.

b) BEGINNING JANUARY 1, 2011 – Taxation of Food

i) SUBJECT TO LOCAL TAXES ONLY – “Food and Food Ingredients”

New definition in § 48-8-2(16) – Food will no longer be defined by reference to the federal Food Stamp Act of 1977.

(1) Definition – “Food and Food Ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

- “Food and Food Ingredients” does NOT include (and thus the following are subject to both state and local taxes):
 - Prepared Food;
 - Items ingested or chewed primarily for medical or hygiene purposes. Examples: cough drops, throat lozenges, breath strips, and over the counter medications; and
 - Alcoholic Beverages (*i.e.*, beverages suitable for human consumption and contain 0.5% or more of alcohol by volume) and Tobacco.

(2) Examples of “Food and Food Ingredients” That Are Subject to Local Taxes Only:

- Most prepackaged or repackaged items sold for ingestion by humans for taste or nutritional value. Examples:
 - prepackaged boxed cereal, cartons of milk, peanut butter ground in the store by either the seller or the customer, deli meat sliced by the seller and sold by weight, potato salad purchased in bulk by the seller and sold to customers by weight or volume as long as the seller does not add any ingredients to the potato salad;
- Raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods, that require cooking by the consumer as in Chapter 3, part 401.11 of the U.S. FDA Food Code so as to prevent food borne illnesses;
- Packaged beverages of all kinds, including bottled water;
- Candy;
- Vending machine items;
- Liquids used in cooking that exceed the alcohol content of 0.5% but are not intended for sale as a beverage (drinkable liquid), are food and food ingredients.
 - Examples: cooking wine and vanilla extract; and
- Dietary Supplements as defined below and in Appendix C of the Streamlined Sales and Use Tax Agreement:

“Dietary Supplement” means any product, other than “tobacco,” intended to supplement the diet that contains one or more of the following dietary ingredients:

 1. A vitamin, mineral, herb or other botanical, amino acid, a dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination of any ingredient described above; and
 2. That is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

3. That is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36.

ii) **SUBJECT TO BOTH STATE AND LOCAL TAXES – “Prepared Food”**

(1) Definition – “Prepared Food” includes food:

- Sold in a heated state or heated by the seller.
 - This includes food that was heated by the seller at any time before the sale even if it is in an unheated state at the time of the sale. Examples: restaurant meals of all kinds; bread heated or baked by the seller at the seller’s location, even though the dough was made off-site; rotisserie chicken heated by the seller and sold in a heated or unheated state; or
- With two or more food ingredients mixed or combined by the seller for sale as a single item.
 - Examples: dough made by the seller at the seller’s location; bakery items made from scratch by the seller at the seller’s location; potato salad, cole slaw, baked beans, deviled eggs, etc. when prepared by the seller onsite; potato salad purchased in bulk by the seller to which the seller adds an ingredient such as salt or pepper and then sells by weight or volume; deli sandwiches; or
- Sold with eating utensils provided by the seller.
 - This includes plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food. Example: fountain beverages. With respect to utensils, “provided by the seller” means actually provided to the purchaser, customarily provided to the purchaser, or only made available to purchasers.

(2) “Prepared Food” does NOT include (and thus the following are subject to local taxes only):

- Food that is only cut, repackaged, or pasteurized by the seller. Example: deli meat sliced by the seller and sold by weight;
- Raw animal foods such as eggs, fish, meat, and poultry, and food containing such items, that require cooking by the consumer as in Chapter 3, part 401.11 of the U.S. FDA Food Code so as to prevent food borne illnesses;
- Food sold by a seller whose proper primary North American Industrial Classification System code is subsector 311, food manufacturing. However, if sellers in industry group 3118, bakeries and tortilla manufacturing, sell their goods with eating utensils provided by the seller, the food is treated as “Prepared Food” and is subject to both state and local taxes; and
- Food sold by a seller whose proper primary North American Industrial Classification System code is industry group 3121, beverage manufacturing.

(3) Food purchased with food stamps will continue to be exempt even though the definition of exempt food will no longer refer to the Food Stamp Act of 1977.

c) LOCAL SALES TAX RATE CHANGES

The partial 1% local sales and use tax exemptions for sales of food and food ingredients in five Georgia counties will cease on January 1, 2011. Thus, in the following counties, the full rate of local tax will apply to all sales of Food and Food Ingredients and Prepared Food:

- DeKalb - Previous 1% exemption for the Homestead Option Sales Tax
- Rockdale - Previous 1% exemption for the Homestead Option Sales Tax
- Webster - Previous 1% exemption for the Local Option Sales Tax
- Taliaferro - Previous 1% exemption for the Local Option Sales Tax
- Muscogee - Previous 1% exemption for the 2nd Local Option Sales Tax

FOR MORE INFORMATION

For more information on this subject, contact the Taxpayer Services Division at 404-417-4300, from 8:00 am to 4:30 pm EST, Monday through Friday, excluding holidays.

Persons with hearing or speech impairments may call our TDD number at 404-417-4302.

For forms and other information, visit our website (www.dor.ga.gov).
